

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Waiver of Parts 2 and 90 of the
Commission's Rules to Permit
New York Metropolitan Area
Public Safety Agencies to Use
Frequencies at 482-488 MHz
on a Conditional Basis

ORDER

Adopted: March 14, 1995;

Released: March 17, 1995

I. INTRODUCTION

1. By this action, the Commission waives Parts 2 and 90 of its rules to permit the temporary assignment of frequencies in the 482-488 MHz band (television Channel 16) to public safety agencies in the New York City metropolitan area. Public safety use of these frequencies will be permitted for a period of at least five years or until the Commission assigns Channel 16 in New York City for advanced television service (ATV) and the television broadcast licensee begins to utilize Channel 16 for ATV operations. This band is currently allocated to the broadcasting service but is not allotted for use in New York City. We find that circumstances exist that warrant a waiver of our rules to permit use of this spectrum by public safety radio services in the New York City metropolitan area. Granting this conditional waiver will provide public safety agencies with immediate spectrum relief that is urgently needed in the congested New York City metropolitan area.

II. BACKGROUND

2. On April 10, 1992, the New York City Public Safety Agencies (Agencies),¹ a group of twelve public safety agencies in the New York City metropolitan area, filed a Joint Request for Waiver (Waiver Request) seeking to use television Channel 16 for public safety communications in the New York City metropolitan area. In their Waiver request, the Agencies submit that the sheer size and density of the New York metropolitan area's resident, working and visitor populations present unique challenges to public safety agencies. They state that, in this environment, public safety agencies must rely on modern radio communications systems to support their operations. They further indicate that increased demand for radio communications channels has

far outstripped the capacity of the channels allocated for public safety communications purposes in the New York City area. The Agencies state that they must update, expand and modernize their radio communications systems to carry out their mandated responsibilities; but there are no frequencies available in the New York City metropolitan area that can meet their immediate needs. In addition, the Agencies note that not all New York City emergency response agencies can communicate with one another via radio at the scene of an emergency incident. Their goal is to implement a mutual aid network on the requested frequencies to permit effective coordination of their responses to emergency situations.

3. The Agencies submit that the requested frequencies can be used for public safety systems within the New York City metropolitan area without causing harmful interference to any full power broadcast television stations. They state that they would use Channel 16 in a manner such that their operations do not cause interference to TV service and to have their licenses conditioned on that basis. Further, the Agencies note that there is a potential low power television (LPTV) station on adjacent Channel 17, and that they would coordinate with the licensee for that station to ensure that their proposed operations would not cause harmful interference to the LPTV station operator. As with respect to full power broadcast stations, the Agencies would accept a condition on use of Channel 16 on the basis that their operations not cause interference to LPTV operations.

4. Since the time of the filing of the Waiver Request, the Commission has taken action to implement advanced television technology (ATV) in the United States by proposing to assign to each existing station a second channel that would be utilized for ATV on a simulcast basis. On August 5, 1992, the Commission published a draft Table of Allotments for ATV that included an allotment for Channel 16 in New York City.²

5. On April 14, 1994, the Agencies filed a Supplement Request for Waiver (Supplement) that provides additional information to justify the Waiver Request and to assess the impact of the ATV proceeding on the Waiver Request. The Supplement discusses data collected from the Agencies intended to confirm that the channels currently allocated for public safety use are severely overloaded. These data indicate that loading on the channels used by the Agencies substantially exceeds the maximum levels set forth in our rules. As a result, the Agencies experience delays and backlogs in even the most critical radio transmissions.

6. In the Supplement, the Agencies contend that use of Channel 16 is the only realistic alternative for immediately resolving the public safety spectrum shortage in New York City. They state that investment in trunking technology in the existing spectrum would not be feasible because the one-time cost (estimated at over \$275 million) would be prohibitive and the Agencies consider other technologies such as narrow-band equipment, to be so new as to

¹ These public safety agencies consist of: New York City Police Department; New York City Fire Department; New York City Emergency Medical Services; New York City Department of Corrections; New York City Transit Authority; New York City Department of Transportation; New York City Health and Hospitals Corporation Police; New York City Department of Parks

and Recreation; New York City Department of General Services; Nassau County Police Department; Elmont Fire District and Town of Islip.

² Trimtab Productions, Inc. has been issued a Construction Permit for an LPTV station, W178M, New York, New York.

³ See *Second Further Notice of Proposed Rule Making*, 10 FCC Rcd No. 87-268, 7 FCC Rcd 5376 (1992).

untested on the scale needed. They argue that allocation of a channel other than Channel 16 would involve similar costs. The Agencies currently operate primarily in the 450-482 MHz band, which encompasses television Channels 14 (470-476 MHz) and 15 (476-482 MHz).⁴ If the Agencies are granted spectrum contiguous to the existing spectrum, they could utilize their existing radio equipment, with minor, inexpensive modifications, for operations on both the existing frequencies and the new spectrum. Allocation of a non-contiguous channel, however, would require replacement of the existing equipment with equipment designed to accommodate both the existing and new bands. The Agencies estimate that such replacement would cost upwards of \$200 million, which they allege would be prohibitively expensive.

7. The Agencies maintain that provision of Channel 16 for public safety would not curtail ATV implementation in New York because there are other channel options for providing ATV. They argue further that Channel 16 should not be a candidate for consideration for an ATV allotment in New York City due to the possibility of creating interference to public safety operations on the adjacent Channel 15. The Agencies note that an ATV transmitter on Channel 16 would likely be located on either the Empire State Building or the World Trade Center in New York, where it would be co-located with public safety stations using Channel 15. They state that this would violate the FCC separation restrictions for adjacent channel operations and create the potential for adjacent channel interference.⁵

8. On November 21, 1994, the Agencies amended their Waiver Request by submitting a Request for Conditional Waiver of Parts 2 and 90 of the Rules of the Federal Communications Commission (Conditional Waiver Request) in order to utilize Channel 16 for public safety communications on an interim basis. The Conditional Waiver Request includes an Agreement between the Agencies and the Television Broadcasters All Industry Committee (Broadcasters), a group of broadcast licensees of television broadcast stations operating in the New York City metropolitan area.⁶ The Broadcasters submitted concurrently a Statement in Support of the Conditional Waiver Request.

9. The agreement between the Agencies and the Broadcasters would satisfy the immediate need of the Agencies for additional spectrum for public safety operations while preserving the possibility that Channel 16 will ultimately be utilized for ATV operations in New York City. Under the terms of the agreement, the Agencies would operate on Channel 16 on an interim basis until such time, but in no event for less than five years, when that channel

is allotted in the New York City metropolitan area for ATV, and a television broadcast licensee is authorized and begins to utilize Channel 16 for ATV broadcast operations.

10. The Agencies and Broadcasters foresee a number of additional benefits that would accrue from a grant of the Conditional Waiver Request. Under the agreement: 1) they will work with major equipment manufacturers to promote the development of spectrum efficient land mobile technology; 2) the Broadcasters will exert their influence to facilitate testing by the "Advisory Committee on Advanced Television Services of the FCC" with respect to ATV-to-land mobile interference; 3) the Broadcasters and the Agencies will jointly explore creative solutions to reduce the extent of the Agencies' utilization of spectrum resources; and, 4) the Agencies will employ reasonable efforts to implement Mobile Data Voice communications.⁷ The Agencies also will commit, with the cooperation of the Broadcasters, to restrict their operations on Channel 16 so as to ensure that interference will not result to the operations of any existing NTSC⁸ broadcast operations in the vicinity of New York City. The agreement includes appropriate standards and operating parameters for the land mobile operations intended to ensure that the Agencies' operations on Channel 16 would not result in prohibited interference to the operations of existing television broadcast licensees.⁹ We note that the Agencies also expressed a willingness to establish a new coordination body, the New York City Public Safety Agency Coordinating Committee, to oversee frequency coordination in the Channel 16 band. This committee will serve in an advisory capacity to the APCO Regional Frequency Coordinator. Coordination between the Public Safety agencies and New York City broadcast interests will be conducted through a joint committee composed of representatives of the Agencies and the Broadcasters. We anticipate that affected LPTV operators will participate in this coordination. Finally, we note that the agreement contemplates periodic reports from the Joint Committee to the Commission. We anticipate that these reports will be made annually at a minimum.

11. The Conditional Waiver Request, including details of the supporting agreement was released for public comment on December 14, 1994.¹⁰ Comments were filed by the Association for Maximum Service Television, Inc. (MSTV); the Association of Public Safety Communications Officials International, Inc. (APCO); the Atlantic Chapter of APCO; the Association of Federal Communications Consulting Engineers (AFCCE); the New York State Law Enforcement Telecommunications Committee; the New York City Transit Authority; and Trimtab Productions, Inc. (Trimtab), the permittee of LPTV station W17BM in New York City. Reply comments were filed by National Innovative Programming Network, Inc., the tentative selectee for a LPTV

⁴ See 47 C.F.R. §§ 90.307 and 90.309.D

⁵ *Id.*

⁶ The Broadcasters consist of CBS Inc. (WCBS-TV, New York Channel 2); American Broadcasting Companies, Inc. (WABC-TV, New York Channel 7); National Broadcasting Company, Inc. (WNBC-TV, New York Channel 4); WPIX Inc. (WPIX-TV, New York Channel 11); Educational Broadcasting Corporation (WNET, Newark, New Jersey Channel 13); WNJU Broadcasting Corporation (WNJU-TV, Linden, New Jersey Channel 47); WNYC Communications Group (WNYC-TV, New York Channel 31); Fox Television Stations, Inc. (WNYW, New York Chan-

nel 5); WWOR-TV, Inc. (WWOR-TV, Secaucus, New Jersey Channel 9), and WXTV License Partnership, G.P. (WXTV, Paterson, New Jersey Channel 41).

⁷ Mobile Data Terminals Systems use digital technology and provide non-voice data transmission capability. These systems use less spectrum than voice communications and thus are more efficient.

⁸ National Television Systems Committee, an industry group first established in 1940 to develop television broadcast standards and used as a reference when describing the existing television standard.

⁹ See Conditional Waiver Request at Attachment B.

¹⁰ See Public Notice, Released December 14, 1994, DA 94-1459.

station for Channel 19 in New York City, and the Agencies. No opposition to the Conditional Waiver Request was filed. However, some issues were raised by the parties and these are discussed in the following paragraphs.

III. DISCUSSION

12. Based on the record, we believe that the public safety agencies in the New York City metropolitan area have an urgent and immediate need for additional spectrum capacity for public safety communications. Further, we believe that use of Channel 16 will provide immediate and necessary relief to these public safety agencies and will also allow for development of interoperability of communications between the public safety agencies. Finally, we conclude that this spectrum relief for the New York City public safety agencies can be accomplished without adversely affecting existing TV operations or our plans for implementation of ATV. Therefore, we find that the conditional grant of a waiver to the Agencies to use television Channel 16 is in the public interest. We are conditioning the grant of the waiver to reflect the concerns of broadcasters, as discussed below.

13. MSTV is concerned that grant of a waiver for use of Channel 16 for land mobile public safety operations could interfere with the implementation of ATV.¹¹ It argues that any permanent re-allocation of broadcasting spectrum to the land mobile public safety services prior to resolution of the regulatory and technical issues associated with the implementation of ATV will frustrate the full implementation of ATV. However, MSTV does not object to the conditional grant of a waiver for public safety use of Channel 16; but it requests that reporting requirements regarding loading and use of this band be imposed on the public safety users and that the waiver be granted for one year terms so that an annual determination can be made regarding renewal of the waiver authority. In reply, the Agencies point out that the requested waiver would be conditioned upon there being no broadcaster authorized and ready to commence ATV operations on Channel 16 in New York and that the agreement between the Agencies and the Broadcasters provides for periodic updates from the Agencies to the Commission.

14. We believe that the conditional waiver envisioned in the agreement between the Agencies and the Broadcasters sufficiently ensures that if Channel 16 is required for ATV implementation, it will be available on a timely basis.¹² Further, the periodic submission to the Commission of reports on the progress made with respect to the technical issues, as discussed in the agreement, should insure that the public safety agencies are moving toward the implementation of spectrum efficient technology. Therefore, we agree with the Agencies that annual renewal action would be

unnecessary and a waste of resources in light of the reporting requirement. Requiring one-year renewals also does not provide the Agencies sufficient assurance of continued operation over the five years to justify the expenditures that they will make.

15. Trimtab argues that the Agencies have underestimated the extent of potential interference from its Channel 17 low power television station and that such operation will limit use of Channel 16 for land mobile public safety purposes. Further, it argues that the Agencies must protect Trimtab's low power television operation on Channel 17 from interference from public safety operations.¹³ In reply, the Agencies contend that the adjacent channel interference issue raised by Trimtab is not unusual and can be resolved through standard engineering practices, including the use of radio frequency (RF) filtering.

16. We agree with the Agencies that the potential for adjacent channel interference to public safety operations on Channel 16 from LPTV operations on Channel 17 can be eliminated through engineering approaches and that Channel 16 can be utilized by public safety entities despite the close proximity of the LPTV operations. With respect to potential interference to the LPTV operations from the public safety operations, we also agree with the Agencies' conclusion that, due to the relatively low power and transient nature of the public safety mobile equipment, the likelihood of interference will be small; and any such interference likely would be insignificant and transient in nature. In any case, the Agencies indicated in their initial Waiver Request that they will correct any instance of interference to low power television operations.¹⁴ Based on the record and on the commitment from the public safety agencies, we conclude that this should be sufficient assurance that television operations will be adequately protected. We therefore will specify in the grant of the Waiver Request that LPTV station W17BM has no responsibility to protect land mobile operations on adjacent TV Channel 16 other than from spurious emissions that exceed those permitted by our rules. We will also specify that land mobile licensees must correct, at their expense, interference caused by their operations to the reception of W17BM within its protected signal contour.¹⁵

17. APCO supports the Conditional Waiver Request, but recommends that we require that narrow-band equipment utilizing 12.5 kHz channels, be used when implementing public safety communications links in the band.¹⁶

18. We encourage the public safety agencies to utilize narrow-band equipment or other spectrum efficient technology as soon as feasible in this spectrum. However, to maintain flexibility for the public safety community, we will not require here that any specific equipment or technology be used. This will allow the Agencies to fully utilize this band in whatever manner they choose in order to

¹¹ See MSTV comments at 5.

¹² The parties to the agreement anticipate that, based on the latest Master Calendar of the FCC advisory Committee on Advanced Television Service and an approximate schedule for FCC action, some stations around the country could be issued an ATV license and a construction permit to begin ATV service in the first half of 1997. Purchase and installation of ATV transmitting equipment is estimated to take about one year; thus, early ATV broadcasts could begin by mid-1998. However, in New York, the parties expect that it will take additional time to locate and construct an ATV transmission site, due to the

would likely be located. They believe that it may require an additional three or four years to begin ATV transmissions in New York City, and thus ATV broadcast operations in New York City is unlikely in the next five years.

¹³ See Trimtab comments at 1-3.

¹⁴ See Waiver Request at 35.

¹⁵ The protected signal contour for LPTV stations is defined in § 74.707 of the Commission's Rules.

¹⁶ See APCO comments at 3.

provide for important public safety communications. However, over the five year period of the conditional waiver, we do expect substantial progress on the part of the Agencies to develop spectrum efficient systems in this spectrum as well as the existing public safety bands, as discussed above.

19. In a related matter, on April 21, 1994, the New York City Transit Police (NYCTP), one of the agencies participating in the Waiver Request, submitted its own Request for Waiver to use fifteen land mobile channels out of television Channel 19 for its public safety operations. NYCTP stated that it was submitting this request because it has a stringent implementation schedule associated with funding for a multi-million dollar radio communication capital program. Since Channel 19 had not been proposed for allotment for ATV by the Commission, it was perceived by NYCTP to be readily available for land mobile purposes, and funds available to NYCTP would permit it to build a new radio system utilizing Channel 19 frequencies. However, NYCTP has indicated that if the Commission were to act in an expeditious manner on the Agencies' request to use Channel 16, its own request for Channel 19 would become unnecessary. We believe that having all the parties operate on Channel 16 will be spectrum efficient and increase interoperability among the public safety agencies in the New York City metropolitan area. Therefore, we are dismissing the NYCTP request to use Channel 19.

IV. ORDERING CLAUSES

20. It is hereby ORDERED THAT, the Joint Request for Waiver filed by the New York Public Safety Agencies is GRANTED to the extent discussed herein, for a period of at least five years or until any television broadcast licensee in the New York City metropolitan area initiates use of Channel 16 for ATV broadcast operations, whichever is longer. Sections 2.106 and 90.311 of the Commission's Rules are waived so that New York City metropolitan area public safety agencies may use 482-488 MHz, for land mobile public safety services under the conditions specified in the Appendix. It is hereby further ORDERED THAT the Request for Waiver filed by the New York City Transit Police Department to use television Channel 19 IS DISMISSED. These actions are taken pursuant to sections 4 (i), 303 (c), (f), (g), and (r), and 309 (a) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154 (i), 303 (c), (f), (g), and (r).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

In order to prevent interference between the proposed land mobile operations on Channel 16 in New York City and the existing television operations of WNEP-TV in Scranton, Pennsylvania on Channel 16 (FCC File Number BLCT-2623) and WPHL-TV in Philadelphia, Pennsylvania on Channel 17 (FCC File Number BLCT-2611), the proposed land mobile operation will be restricted as follows:

Base station operation is permitted in the five boroughs of New York City and Nassau, Westchester and Suffolk Counties in New York, and Bergen County, New Jersey. Mobile operation is permitted in these counties and boroughs as well as outside these areas provided the distance from the Empire State Building (Geographic Coordinates: 40° 44' 54" N, 73° 59' 10" W) does not exceed 48 kilometers (30 miles).

Co-Channel Television Protection For base stations to be located in the five boroughs that comprise the City of New York and other jurisdictions east of the Hudson River and Kill Van Kull, the maximum effective radiated power (ERP) will be limited to 225 watts at an antenna height of 152.5 meters (500 feet) above average terrain. Adjustment of the permitted power will be allowed provided it is in accordance with the "169 kilometer Distance Separation" entries specified in Table B or prescribed by Figure B of Section 90.309(a)(5) of the FCC Rules.

For base stations to be located west of the Hudson River, the maximum ERP will be limited to the entries specified in Table B or prescribed by Figure B of Section 90.309(a)(5) of the FCC Rules for the actual separation distance between the land mobile base station and the transmitter site of WNEP-TV, Scranton (Geographic Coordinates: 41° 10' 58" N, 75° 52' 21" W).

Mobile stations associated with such base stations will be restricted to 100 watts ERP in the area of operation extending eastward from the Hudson River and 10 watts ERP in the area of operation extending westward from the Hudson River. These restrictions offer 40 dB of protection to the Grade B coverage contour of WNEP-TV, Scranton.

Adjacent Channel Television Protection

The above parameters and conditions are considered to be sufficient to protect first-adjacent channel television station WPHL-TV, Philadelphia (Geographic Coordinates: 40° 02' 30" N, 75° 14' 24" W). Operation of mobile units within a radius of 48 kilometers (30 miles) from the Empire State Building would be no closer than 8 kilometers (5 miles) from the WPHL Grade B coverage contour. This will offer a 0 dB protection ratio to WPHL-TV.

Low Power Television Protection

LPTV station W17BM has no responsibility to protect land mobile operations on adjacent TV Channel 16 other than from spurious emissions. Land mobile licensees must correct, at their expense, interference caused by their operations to the reception of W17BM within its protected signal contour as defined in Section 74.707 of the FCC Rules.

Periodic Reports

The Joint Committee of broadcasters and public safety agencies - as contemplated in the agreement - will file annual reports with the Commission regarding the status of implementation and progress toward the development of new spectrum efficient systems.



K Media

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October 25, 2000

BY FEDERAL EXPRESS

Mr. Vincent M. Mansfield, Deputy Chief
Office of Technology & System Dev.
New York City Police Department
1 Police Place
New York, NY 10038

Mr. Vincent R. Stile
Chairman, NYMAC
Director, Police Communications Systems
Suffolk County Police Department
30 Yaphank Avenue
Yaphank, NY 11980

Re: Application of K Licensee Inc. for DTV Displacement Relief for LPTV Station
WEBR(LP), Channel 17, Manhattan, New York (FCC File No. BPTTL-
19991201AAP)

Gentlemen:

In my last correspondence to you, dated September 19, 2000, we provided NYMAC with a copy of a proposed amendment to the above-referenced FCC application for NYMAC_s review (delivered by Federal Express on September 20, 2000). That proposed amendment included an engineering statement prepared by our television broadcast engineering consultant, Mr. Clarence Beverage of Communications Technologies, Inc., Marlton, New Jersey, with a narrative section addressing _Land Mobile Adjacent Channel 16._

On September 25, 2000, Clarence Beverage reported to me the substance of his conversation that day with Lieutenant Ted Dempsey of NYPD regarding NYMAC_s concerns with the above referenced FCC application for DTV Displacement Relief and the proposed amendment referred to above. Mr. Beverage relayed NYMAC_s concerns regarding the need to avoid any new adjacent-channel interference in the Channel 16 band. He further relayed NYMAC_s desire to document formally the following four precautionary steps which, as he explained to Lt. Dempsey, we intend to take to accomplish that result.

1. At such time as WEBR(LP)_s amended DTV Displacement Relief Application is granted and an FCC construction permit is issued, we will purchase and install at our expense additional filtering in the proposed transmission facility sufficient to

NYMAC c/o Messrs. Mansfield and Stile

October 3, 2000

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prevent additional unauthorized radiation from WEBR(LP) within the adjacent Channel 16 band.

1. Before WEBR(LP) commences tests of operation at the higher authorized transmission power, NYMAC will be notified by WEBR(LP) in advance, and offered the opportunity to be present when measurements are taken at the transmission site to ensure the adequacy of the additional filtering.
1. Measurements will be taken using an accurate spectrum analyzer at the bandpass filter output/feedline input junction using a standard test pattern for modulation to compare WEBR(LP)'s emissions in the Channel 16 band operating at the higher power with the emissions in the Channel 16 band at its currently authorized facilities.
1. WEBR(LP) will not commence operations at the higher authorized power until these measurements confirm the adequacy of the additional filtering.

If these four steps reflect your understanding of the precautions we intend to take and are satisfactory to NYMAC, please countersign this letter in the spaces indicated on the following page and return a copy to me for inclusion in the proposed amendment when we file it with the FCC. Kindly direct any questions you may have regarding the four precautionary steps to Mr. Beverage at (856-985-0077).

As stated many times previously, we do not intend to make any changes to WEBR(LP) that will interfere with public safety communications.

Sincerely,



Young D. Kwon

NYMAC c/o Messrs. Mansfield and Stile

October 3, 2000

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On behalf of NYMAC, we have read the foregoing letter and understand that certain precautions described in the letter will be taken before WEBR(LP) commences operation at a higher authorized transmission power.



Vincent M Mansfield

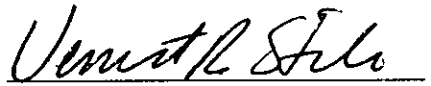
Deputy Chief

Office of Technology & System Dev.

New York City Police Department

11-10-00

Date



Vincent R. Stile

Chairman, NYMAC

Director, Police Communications Systems

Suffolk County Police Department

11/11/00

Date

cc: Lt. Ted Dempsey
Clarence M. Beverage

D

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Julian L. Shepard
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August 28, 2002

BY FACSIMILE AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lt. Cornelius Walsh
New York City Police Department
Office of Technology and Systems
Development
One Police Plaza, Room 900
New York, NY 10038

Re: Coordination of Current and Future NYPD Use of Channel 16 Frequencies

Dear Lt. Walsh:

Thank you for initiating the meeting between representatives of K Licensee Inc. ("K Licensee"), myself and Clarence Beverage, and representatives of the New York City Police Department (NYPD) and the New York Metropolitan Area public safety agencies (NYMAC), yourself and Mr. Emil Vogel, last Friday, August 23, 2002, at NYPD Headquarters, One Police Plaza, New York, NY. As you know, the history of cooperation between our client, K Licensee, NYPD and NYMAC is a matter of record at the Federal Communications Commission (FCC). Our client remains committed to that spirit of cooperation

As you explained at the meeting, the purpose was to begin coordination between the parties in furtherance of the agreement dated October 25, 2000, and in anticipation of certain future FCC applications by NYPD: (1) to secure "permanent licensing" on all of NYPD's existing Channel 16 authorizations; and (2) to secure new authorizations, permanently licensed, on frequencies located closer to the Channel 16/17 channel edge.

During our meeting, Mr. Beverage provided NYPD with copies of the engineering narrative portion of K Licensee's most recent amendment to its DTV displacement application, which contained a technical description of the proposed facilities and a statement indicating that K Licensee's proposed facilities would not increase the level of out-of-band emissions on Channel 16 from their current level. NYPD requested the following additional information which K Licensee agreed to

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provide: (1) the manufacturer, model number, and characteristics of the current Channel 17 bandpass filter in use by WEBR(CA), which provides attenuation in adjacent Channel 16; (2) the manufacturer, model number and characteristics of the new bandpass filter associated with the proposed facilities; and (3) antenna elevation patterns for WEBR(CA) across the Channel 16 frequency range. Clarence Beverage will be providing this information to you and Emil as soon as possible.

Also during our meeting, NYPD provided K Licensee with a very brief narrative description of the NYPD communications system on Channel 16, including information indicating that under current operations the actual transmission power levels of various fixed base, mobile, and portable units are lower than the licensed maximum power levels. As follow-up to our meeting, to facilitate cooperation, technical evaluation and effective coordination, K Licensee requires certain technical information about the NYPD's Channel 16 operations, which may require confidential treatment.

Enclosed please find a draft Confidentiality/Non-Disclosure Agreement to ensure that any information marked "Confidential" provided by NYPD to this Firm, to Clarence Beverage, or to K Licensee will be protected. Under the agreement, no disclosures of sensitive information from NYPD will be made by this Firm, Mr. Beverage or our client, to any third parties, subject to certain limited exceptions. We ask that you have this draft agreement reviewed by NYPD's legal advisor as soon as possible. Kindly direct any questions regarding the agreement to my attention.

Based on K Licensee's willingness to make these formal assurances of confidentiality, K Licensee hereby requests the following information about the current NYPD communications system on Channel 16 and NYPD's plans for further expansion on Channel 16.

Current NYPD Use of Channel 16. Please provide us with a more detailed description of the current NYPD communications system on Channel 16 including:

- 1) a description of the entire NYPD communications network configuration, including the use of repeater functions, narrow-band, and other spectrum-efficient technologies, such as trunking systems, and the role the Channel 16 frequencies play in the overall network;
- 2) a Channel 16 frequency plan indicating the current system loading on each channel over typical 24 hour periods;

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- 3) a description of the Channel 16 equipment types (manufacturers and model numbers), geographic locations of deployed base stations, control stations, repeaters, mobile and portable transceivers and their respective transmission power levels (authorized and actual), and antenna heights and configurations (authorized and actual);
- 4) a description of any filters or other signal attenuation techniques currently used by NYPD to protect Channel 17 television reception from Channel 16 land mobile radio interference; and
- 5) a description of current maintenance procedures for NYPD's equipment utilizing the Channel 16 frequencies to ensure the prevention of undesired out-of-band or adjacent channel emissions.

Future NYPD Use of Channel 16. Please provide us with the design considerations for expanded use of Channel 16 including:

- 1) planned geographic coverage areas, frequencies, channel-widths and deviations; optimal channel loading;
- 2) an equipment-specific description of base stations, power levels, and transceiver and antenna characteristics for base stations, control stations, repeaters, mobile and portable units;
- 3) planned use of digital vs. analog equipment;
- 4) capacity needs and system growth potential;
- 5) planned techniques for out-of-band and adjacent-channel protection, especially with respect to television reception on Channel 17;
- 6) the status of coordination between NYPD and other New York area public safety agencies to develop a coordinated plan for future use of the Channel 16 frequencies to ensure maximum efficiency and minimal disruption of other services.

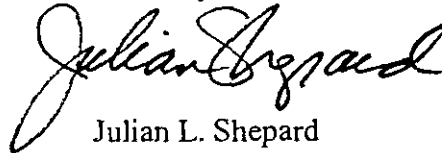
In the absence of this information, and until we review NYPD's anticipated formal FCC applications, it would be grossly premature for K Licensee to take any position on NYPD's proposal to pursue "permanent licensing" for its existing uses or planned future uses. However, after our meeting, we reviewed the conditions in

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the Appendix to the FCC's 1995 Order granting a waiver to permit New York metropolitan area public safety agencies to use frequencies at 482-488 MHz on a conditional basis (copy enclosed). We note that one of the conditions pertains to Low Power Television Protection -- the petitioners agreed to use Channel 16 in a manner such that their operations do not cause interference to TV service and to have their licenses conditioned on that basis. The FCC specifically required the public safety agencies to correct instances of interference to television reception on Channel 17 at their expense. Accordingly, at a minimum, K Licensee would expect the concept of "permanent licensing" to include such conditions, *i.e.*, there must be no diminution of protection for Channel 17 television reception.

We appreciate NYPD's courtesy in convening the meeting and we look forward to receiving further information and working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julian L. Shepard". The signature is fluid and cursive, with the first name "Julian" being the most prominent part.

Julian L. Shepard

Enclosures

cc: Mr. Young D. Kwon
Mr. Clarence Beverage

DRAFT

CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into as of this _____, 2002, by and between the New York City Police Department ("NYPD") Office of Technology and Systems Development, and K LICENSEE INC., the licensee of a Class A Low Power Television Station, WEBR(CA), licensed on Channel 17 at Manhattan, New York.

RECITALS

WHEREAS, K Licensee and NYPD have commenced discussions and coordination in furtherance of a letter agreement between K Licensee, NYPD, and the New York Metropolitan Area public safety agencies ("NYMAC") dated October 25, 2000, and in anticipation of certain future Federal Communications Commission ("FCC") applications to be filed by NYPD: (a) to secure "permanent licensing" on all of NYPD's existing Channel 16 authorizations; and (b) to secure new authorizations, permanently licensed, on frequencies located closer to the Channel 16/17 channel edge;

WHEREAS, the Parties must share certain information in order to facilitate coordination;

WHEREAS, K Licensee requested certain information from NYPD in a letter dated August 28, 2002, copy attached hereto as Annex I;

WHEREAS, some of the requested information may be Sensitive Information as such term is defined below; and

WHEREAS, unauthorized disclosure of this information may be harmful to public safety.

NOW THEREFORE, in consideration of the disclosure of Sensitive Information (as defined herein) by NYPD, K Licensee Inc. agrees as follows:

1. Definitions

1.1 Information means any oral or written communications, analyses, or data, including, but not limited to, the information requested in writing by a letter dated August 28, 2002 to Lieutenant Cornelius Walsh from Julian L Shepard, counsel to K Licensee Inc.

1.2 Party means the individual or entity executing this Agreement and any subsidiary, division, affiliate, or parent company of such entity.

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1.3 Sensitive Information means the information subject to the limitations of Section 5 of this Agreement, owned or possessed by NYPD and provided to K Licensee, Venable, LLP or Communications Technologies, Inc. and marked "Confidential."

2. All information that is disclosed by NYPD to K Licensee Inc. shall be protected hereunder by K Licensee Inc. as Sensitive Information. Unless otherwise agreed to by the parties in writing or except as required by law, including, without limitation, any government authority, regulatory authority or court of competent jurisdiction, K Licensee Inc. covenants not to disclose or reveal NYPD's Sensitive Information for any purpose. However, the foregoing covenant shall not prevent K Licensee from utilizing or disclosing Sensitive Information in submissions to the FCC in any matter or proceeding initiated by NYPD or other New York metropolitan area public safety agencies, provided K Licensee makes a formal request that such information be withheld from public inspection.

3. Sensitive Information of NYPD shall remain the property of NYPD. Sensitive Information of NYPD shall be treated as confidential and safeguarded hereunder by K Licensee Inc., for a period of ten (10) years from the date of disclosure or derivation by K Licensee Inc.

4. K Licensee Inc. agrees that: (i) any Sensitive Information disclosed hereunder shall be used by K Licensee Inc. solely for the purpose of technical evaluation of matters relating to frequency use, sharing and coordination; (ii) it will not use the Sensitive Information disclosed hereunder for any other purposes; and (iii) it will not distribute, disclose or disseminate Sensitive Information to anyone except its employees with a need to know.

5. This Agreement shall not apply to Information that:

5.1 is in the public domain, through no fault of K Licensee Inc.; or

5.2 is disclosed by NYPD to K Licensee Inc., or to a third party expressly without restriction; or

5.3 is already in the possession of K Licensee Inc., without restriction and prior to disclosure of that Information hereunder; or

5.4 is or has been lawfully disclosed by a third party to K Licensee Inc. without an obligation or confidentiality; or

5.5 is developed independently by K Licensee Inc. or others who did not have access to Information disclosed hereunder; or

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5.6 is no longer protected because the applicable period of confidentiality pursuant to Paragraph 3 had ended.

6. K Licensee Inc. shall have or shall enter into agreements with its parent divisions, subsidiary companies, consultants and successors-in-interest that will safeguard the Sensitive Information disclosed hereunder consistent with the terms of this Agreement. With respect to employees, K Licensee Inc. shall advise all employees who will have access to Sensitive Information as to their obligations contained herein. This Agreement shall be binding upon K Licensee Inc. and its successors and assigns.

7. No subsequent amendments, modifications or additions to this Agreement shall be binding and valid unless in writing and signed by each Party.

8. At NYPD's request, K Licensee Inc. shall return or destroy all Sensitive Information of NYPD in tangible form that is in the possession of K Licensee Inc.

9. This Agreement shall be governed by the laws of the State of New York, except its law with respect to choice of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives.

NEW YORK CITY POLICE DEPARTMENT,
OFFICE OF TECHNOLOGY AND
SYSTEMS DEVELOPMENT

K LICENSEE INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Waiver of Parts 2 and 90 of the
Commission's Rules to Permit
New York Metropolitan Area
Public Safety Agencies to Use
Frequencies at 482-488 MHz
on a Conditional Basis

ORDER

Adopted: March 14, 1995;

Released: March 17, 1995

I. INTRODUCTION

1. By this action, the Commission waives Parts 2 and 90 of its rules to permit the temporary assignment of frequencies in the 482-488 MHz band (television Channel 16) to public safety agencies in the New York City metropolitan area. Public safety use of these frequencies will be permitted for a period of at least five years or until the Commission assigns Channel 16 in New York City for advanced television service (ATV) and the television broadcast licensee begins to utilize Channel 16 for ATV operations. This band is currently allocated to the broadcasting service but is not allotted for use in New York City. We find that circumstances exist that warrant a waiver of our rules to permit use of this spectrum by public safety radio services in the New York City metropolitan area. Granting this conditional waiver will provide public safety agencies with immediate spectrum relief that is urgently needed in the congested New York City metropolitan area.

II. BACKGROUND

2. On April 10, 1992, the New York City Public Safety Agencies (Agencies),¹ a group of twelve public safety agencies in the New York City metropolitan area, filed a Joint Request for Waiver (Waiver Request) seeking to use television Channel 16 for public safety communications in the New York City metropolitan area. In their Waiver request, the Agencies submit that the sheer size and density of the New York metropolitan area's resident, working and visitor populations present unique challenges to public safety agencies. They state that, in this environment, public safety agencies must rely on modern radio communications systems to support their operations. They further indicate that increased demand for radio communications channels has

far outstripped the capacity of the channels allocated for public safety communications purposes in the New York City area. The Agencies state that they must update, expand and modernize their radio communications systems to carry out their mandated responsibilities; but there are no frequencies available in the New York City metropolitan area that can meet their immediate needs. In addition, the Agencies note that not all New York City emergency response agencies can communicate with one another via radio at the scene of an emergency incident. Their goal is to implement a mutual aid network on the requested frequencies to permit effective coordination of their responses to emergency situations.

3. The Agencies submit that the requested frequencies can be used for public safety systems within the New York City metropolitan area without causing harmful interference to any full power broadcast television stations. They state that they would use Channel 16 in a manner such that their operations do not cause interference to TV service and to have their licenses conditioned on that basis. Further, the Agencies note that there is a potential low power television (LPTV) station on adjacent Channel 17, and that they would coordinate with the licensee for the station to ensure that their proposed operations would not cause harmful interference to the LPTV station operation. As with respect to full power broadcast stations, the Agencies would accept a condition on use of Channel 16 on the basis that their operations not cause interference to LPTV operations.

4. Since the time of the filing of the Waiver Request, the Commission has taken action to implement advanced television technology (ATV) in the United States by proposing to assign to each existing station a second channel that would be utilized for ATV on a simulcast basis. On August 5, 1992, the Commission published a draft Table of Allotments for ATV that included an allotment for Channel 16 in New York City.²

5. On April 14, 1994, the Agencies filed a Supplement Request for Waiver (Supplement) that provides additional information to justify the Waiver Request and to assess the impact of the ATV proceeding on the Waiver Request. The Supplement discusses data collected from the Agencies intended to confirm that the channels currently allocated for public safety use are severely overloaded. These data indicate that loading on the channels used by the Agencies substantially exceeds the maximum levels set forth in our rules. As a result, the Agencies experience delays and backlogs in even the most critical radio transmissions.

6. In the Supplement, the Agencies contend that use of Channel 16 is the only realistic alternative for immediately resolving the public safety spectrum shortage in New York City. They state that investment in trunking technology on the existing spectrum would not be feasible because the one-time cost (estimated at over \$275 million) would be prohibitive and the Agencies consider other technologies such as narrow-band equipment, to be so new as to

¹ These public safety agencies consist of: New York City Police Department; New York City Fire Department; New York City Emergency Medical Services; New York City Department of Corrections; New York City Transit Authority; New York Department of Transportation; New York City Health and Hospitals Corporation Police; New York City Department of Parks

and Recreation; New York City Department of General Services; Nassau County Police Department; Elmont Fire District and Town of Islip.

² Trimtab Productions, Inc. has been issued a Construction Permit for an LPTV station, W17BM, New York, New York.

³ See *Second Further Notice of Proposed Rule Making*, N.Docket No. 87-268, 7 FCC Rcd 5376 (1992).

untested on the scale needed. They argue that allocation of a channel other than Channel 16 would involve similar costs. The Agencies currently operate primarily in the 450-482 MHz band, which encompasses television Channels 14 (470-476 MHz) and 15 (476-482 MHz).⁴ If the Agencies are granted spectrum contiguous to the existing spectrum, they could utilize their existing radio equipment, with minor, inexpensive modifications, for operations on both the existing frequencies and the new spectrum. Allocation of a non-contiguous channel, however, would require replacement of the existing equipment with equipment designed to accommodate both the existing and new bands. The Agencies estimate that such replacement would cost upwards of \$200 million, which they allege would be prohibitively expensive.

7. The Agencies maintain that provision of Channel 16 for public safety would not curtail ATV implementation in New York because there are other channel options for providing ATV. They argue further that Channel 16 should not be a candidate for consideration for an ATV allotment in New York City due to the possibility of creating interference to public safety operations on the adjacent Channel 15. The Agencies note that an ATV transmitter on Channel 16 would likely be located on either the Empire State Building or the World Trade Center in New York, where it would be co-located with public safety stations using Channel 15. They state that this would violate the FCC separation restrictions for adjacent channel operations and create the potential for adjacent channel interference.⁵

8. On November 21, 1994, the Agencies amended their Waiver Request by submitting a Request for Conditional Waiver of Parts 2 and 90 of the Rules of the Federal Communications Commission (Conditional Waiver Request) in order to utilize Channel 16 for public safety communications on an interim basis. The Conditional Waiver Request includes an Agreement between the Agencies and the Television Broadcasters All Industry Committee (Broadcasters), a group of broadcast licensees of television broadcast stations operating in the New York City metropolitan area.⁶ The Broadcasters submitted concurrently a Statement in Support of the Conditional Waiver Request.

9. The agreement between the Agencies and the Broadcasters would satisfy the immediate need of the Agencies for additional spectrum for public safety operations while preserving the possibility that Channel 16 will ultimately be utilized for ATV operations in New York City. Under the terms of the agreement, the Agencies would operate on Channel 16 on an interim basis until such time, but in no event for less than five years, when that channel

is allotted in the New York City metropolitan area for ATV, and a television broadcast licensee is authorized and begins to utilize Channel 16 for ATV broadcast operations.

10. The Agencies and Broadcasters foresee a number of additional benefits that would accrue from a grant of the Conditional Waiver Request. Under the agreement: 1) they will work with major equipment manufacturers to promote the development of spectrum efficient land mobile technology; 2) the Broadcasters will exert their influence to facilitate testing by the "Advisory Committee on Advanced Television Services of the FCC" with respect to ATV-to-land mobile interference; 3) the Broadcasters and the Agencies will jointly explore creative solutions to reduce the extent of the Agencies' utilization of spectrum resources; and, 4) the Agencies will employ reasonable efforts to implement Mobile Data Voice communications.⁷ The Agencies also will commit, with the cooperation of the Broadcasters, to restrict their operations on Channel 16 so as to ensure that interference will not result to the operations of any existing NTSC⁸ broadcast operations in the vicinity of New York City. The agreement includes appropriate standards and operating parameters for the land mobile operations intended to ensure that the Agencies' operations on Channel 16 would not result in prohibited interference to the operations of existing television broadcast licensees.⁹ We note that the Agencies also expressed a willingness to establish a new coordination body, the New York City Public Safety Agency Coordinating Committee, to oversee frequency coordination in the Channel 16 band. This committee will serve in an advisory capacity to the APCO Regional Frequency Coordinator. Coordination between the Public Safety agencies and New York City broadcast interests will be conducted through a joint committee composed of representatives of the Agencies and the Broadcasters. We anticipate that affected LPTV operators will participate in this coordination. Finally, we note that the agreement contemplates periodic reports from the Joint Committee to the Commission. We anticipate that these reports will be made annually at a minimum.

11. The Conditional Waiver Request, including details of the supporting agreement was released for public comment on December 14, 1994.¹⁰ Comments were filed by the Association for Maximum Service Television, Inc. (MSTV); the Association of Public Safety Communications Officials International, Inc. (APCO); the Atlantic Chapter of APCO; the Association of Federal Communications Consulting Engineers (AFCCE); the New York State Law Enforcement Telecommunications Committee; the New York City Transit Authority; and Trimtab Productions, Inc. (Trimtab), the permittee of LPTV station W17BM in New York City. Reply comments were filed by National Innovative Programming Network, Inc., the tentative selectee for a LPTV

⁴ See 47 C.F.R. §§ 90.307 and 90.309.D

⁵ *Id.*

⁶ The Broadcasters consist of CBS Inc. (WCBS-TV, New York Channel 2); American Broadcasting Companies, Inc. (WABC-TV, New York Channel 7); National Broadcasting Company, Inc. (WNBC-TV, New York Channel 4); WPIX Inc. (WPIX-TV, New York Channel 11); Educational Broadcasting Corporation (WNET, Newark, New Jersey Channel 13); WNJU Broadcasting Corporation (WNJU-TV, Linden, New Jersey Channel 47); WNYC Communications Group (WNYC-TV, New York Channel 31); Fox Television Stations, Inc. (WNYW, New York Chan-

nel 5); WWOR-TV, Inc. (WWOR-TV, Secaucus, New Jersey Channel 9); and WXTV License Partnership, G.P. (WXTV, Paterson, New Jersey Channel 41).

⁷ Mobile Data Terminals Systems use digital technology and provide non-voice data transmission capability. These systems use less spectrum than voice communications and thus are more efficient.

⁸ National Television Systems Committee, an industry group first established in 1940 to develop television broadcast standards and used as a reference when describing the existing television standard.

⁹ See Conditional Waiver Request at Attachment B.

¹⁰ See Public Notice, Released December 14, 1994, DA 94-1459.

station for Channel 19 in New York City, and the Agencies. No opposition to the Conditional Waiver Request was filed. However, some issues were raised by the parties and these are discussed in the following paragraphs.

III. DISCUSSION

12. Based on the record, we believe that the public safety agencies in the New York City metropolitan area have an urgent and immediate need for additional spectrum capacity for public safety communications. Further, we believe that use of Channel 16 will provide immediate and necessary relief to these public safety agencies and will also allow for development of interoperability of communications between the public safety agencies. Finally, we conclude that this spectrum relief for the New York City public safety agencies can be accomplished without adversely affecting existing TV operations or our plans for implementation of ATV. Therefore, we find that the conditional grant of a waiver to the Agencies to use television Channel 16 is in the public interest. We are conditioning the grant of the waiver to reflect the concerns of broadcasters, as discussed below.

13. MSTV is concerned that grant of a waiver for use of Channel 16 for land mobile public safety operations could interfere with the implementation of ATV.¹¹ It argues that any permanent re-allocation of broadcasting spectrum to the land mobile public safety services prior to resolution of the regulatory and technical issues associated with the implementation of ATV will frustrate the full implementation of ATV. However, MSTV does not object to the conditional grant of a waiver for public safety use of Channel 16; but it requests that reporting requirements regarding loading and use of this band be imposed on the public safety users and that the waiver be granted for one year terms so that an annual determination can be made regarding renewal of the waiver authority. In reply, the Agencies point out that the requested waiver would be conditioned upon there being no broadcaster authorized and ready to commence ATV operations on Channel 16 in New York and that the agreement between the Agencies and the Broadcasters provides for periodic updates from the Agencies to the Commission.

14. We believe that the conditional waiver envisioned in the agreement between the Agencies and the Broadcasters sufficiently ensures that if Channel 16 is required for ATV implementation, it will be available on a timely basis.¹² Further, the periodic submission to the Commission of reports on the progress made with respect to the technical issues, as discussed in the agreement, should insure that the public safety agencies are moving toward the implementation of spectrum efficient technology. Therefore, we agree with the Agencies that annual renewal action would be

unnecessary and a waste of resources in light of the reporting requirement. Requiring one-year renewals also does not provide the Agencies sufficient assurance of continued operation over the five years to justify the expenditures that they will make.

15. Trimtab argues that the Agencies have underestimated the extent of potential interference from its Channel 17 low power television station and that such operation will limit use of Channel 16 for land mobile public safety purposes. Further, it argues that the Agencies must protect Trimtab's low power television operation on Channel 17 from interference from public safety operations.¹³ In reply, the Agencies contend that the adjacent channel interference issue raised by Trimtab is not unusual and can be resolved through standard engineering practices, including the use of radio frequency (RF) filtering.

16. We agree with the Agencies that the potential for adjacent channel interference to public safety operations on Channel 16 from LPTV operations on Channel 17 can be eliminated through engineering approaches and that Channel 16 can be utilized by public safety entities despite the close proximity of the LPTV operations. With respect to potential interference to the LPTV operations from the public safety operations, we also agree with the Agencies' conclusion that, due to the relatively low power and transient nature of the public safety mobile equipment, the likelihood of interference will be small; and any such interference likely would be insignificant and transient in nature. In any case, the Agencies indicated in their initial Waiver Request that they will correct any instance of interference to low power television operations.¹⁴ Based on the record and on the commitment from the public safety agencies, we conclude that this should be sufficient assurance that television operations will be adequately protected. We therefore will specify in the grant of the Waiver Request that LPTV station W17BM has no responsibility to protect land mobile operations on adjacent TV Channel 16 other than from spurious emissions that exceed those permitted by our rules. We will also specify that land mobile licensees must correct, at their expense, interference caused by their operations to the reception of W17BM within its protected signal contour.¹⁵

17. APCO supports the Conditional Waiver Request, but recommends that we require that narrow-band equipment, utilizing 12.5 kHz channels, be used when implementing public safety communications links in the band.¹⁶

18. We encourage the public safety agencies to utilize narrow-band equipment or other spectrum efficient technology as soon as feasible in this spectrum. However, to maintain flexibility for the public safety community, we will not require here that any specific equipment or technology be used. This will allow the Agencies to fully utilize this band in whatever manner they choose in order to

¹¹ See MSTV comments at 5.

¹² The parties to the agreement anticipate that, based on the latest Master Calendar of the FCC advisory Committee on Advanced Television Service and an approximate schedule for FCC action, some stations around the country could be issued an ATV license and a construction permit to begin ATV service in the first half of 1997. Purchase and installation of ATV transmitting equipment is estimated to take about one year; thus, early ATV broadcasts could begin by mid-1998. However, in New York, the parties expect that it will take additional time to locate and construct an ATV transmission site, due to the extreme congestion in Manhattan where a co-sited antenna farm

would likely be located. They believe that it may require an additional three or four years to begin ATV transmissions in New York City, and thus ATV broadcast operations in New York City is unlikely in the next five years.

¹³ See Trimtab comments at 1-3.

¹⁴ See Waiver Request at 35.

¹⁵ The protected signal contour for LPTV stations is defined in § 74.707 of the Commission's Rules.

¹⁶ See APCO comments at 3.

provide for important public safety communications. However, over the five year period of the conditional waiver, we do expect substantial progress on the part of the Agencies to develop spectrum efficient systems in this spectrum as well as the existing public safety bands, as discussed above.

19. In a related matter, on April 21, 1994, the New York City Transit Police (NYCTP), one of the agencies participating in the Waiver Request, submitted its own Request for Waiver to use fifteen land mobile channels out of television Channel 19 for its public safety operations. NYCTP stated that it was submitting this request because it has a stringent implementation schedule associated with funding for a multi-million dollar radio communication capital program. Since Channel 19 had not been proposed for allotment for ATV by the Commission, it was perceived by NYCTP to be readily available for land mobile purposes, and funds available to NYCTP would permit it to build a new radio system utilizing Channel 19 frequencies. However, NYCTP has indicated that if the Commission were to act in an expeditious manner on the Agencies' request to use Channel 16, its own request for Channel 19 would become unnecessary. We believe that having all the parties operate on Channel 16 will be spectrum efficient and increase interoperability among the public safety agencies in the New York City metropolitan area. Therefore, we are dismissing the NYCTP request to use Channel 19.

IV. ORDERING CLAUSES

20. It is hereby ORDERED THAT, the Joint Request for Waiver filed by the New York Public Safety Agencies is GRANTED to the extent discussed herein, for a period of at least five years or until any television broadcast licensee in the New York City metropolitan area initiates use of Channel 16 for ATV broadcast operations, whichever is longer. Sections 2.106 and 90.311 of the Commission's Rules are waived so that New York City metropolitan area public safety agencies may use 482-488 MHz, for land mobile public safety services under the conditions specified in the Appendix. It is hereby further ORDERED THAT the Request for Waiver filed by the New York City Transit Police Department to use television Channel 19 IS DISMISSED. These actions are taken pursuant to sections 4 (i), 303 (c), (f), (g), and (r), and 309 (a) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154 (i), 303 (c), (f), (g), and (r).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

In order to prevent interference between the proposed land mobile operations on Channel 16 in New York City and the existing television operations of WNEP-TV in Scranton, Pennsylvania on Channel 16 (FCC File Number BLCT-2623) and WPHL-TV in Philadelphia, Pennsylvania on Channel 17 (FCC File Number BLCT-2611), the proposed land mobile operation will be restricted as follows:

Base station operation is permitted in the five boroughs of New York City and Nassau, Westchester and Suffolk Counties in New York, and Bergen County, New Jersey. Mobile operation is permitted in these counties and boroughs as well as outside these areas provided the distance from the Empire State Building (Geographic Coordinates: 40° 44' 54" N, 73° 59' 10" W) does not exceed 48 kilometers (30 miles).

Co-Channel Television Protection For base stations to be located in the five boroughs that comprise the City of New York and other jurisdictions east of the Hudson River and Kill Van Kull, the maximum effective radiated power (ERP) will be limited to 225 watts at an antenna height of 152.5 meters (500 feet) above average terrain. Adjustment of the permitted power will be allowed provided it is in accordance with the "169 kilometer Distance Separation" entries specified in Table B or prescribed by Figure B of Section 90.309(a)(5) of the FCC Rules.

For base stations to be located west of the Hudson River, the maximum ERP will be limited to the entries specified in Table B or prescribed by Figure B of Section 90.309(a)(5) of the FCC Rules for the actual separation distance between the land mobile base station and the transmitter site of WNEP-TV, Scranton (Geographic Coordinates: 41° 10' 58" N, 75° 52' 21" W).

Mobile stations associated with such base stations will be restricted to 100 watts ERP in the area of operation extending eastward from the Hudson River and 10 watts ERP in the area of operation extending westward from the Hudson River. These restrictions offer 40 dB of protection to the Grade B coverage contour of WNEP-TV, Scranton.

Adjacent Channel Television Protection

The above parameters and conditions are considered to be sufficient to protect first-adjacent channel television station WPHL-TV, Philadelphia (Geographic Coordinates: 40° 02' 30" N, 75° 14' 24" W). Operation of mobile units within a radius of 48 kilometers (30 miles) from the Empire State Building would be no closer than 8 kilometers (5 miles) from the WPHL Grade B coverage contour. This will offer a 0 dB protection ratio to WPHL-TV.

Low Power Television Protection

LPTV station W17BM has no responsibility to protect land mobile operations on adjacent TV Channel 16 other than from spurious emissions. Land mobile licensees must correct, at their expense, interference caused by their operations to the reception of W17BM within its protected signal contour as defined in Section 74.707 of the FCC Rules.

Periodic Reports

The Joint Committee of broadcasters and public safety agencies - as contemplated in the agreement - will file annual reports with the Commission regarding the status of implementation and progress toward the development of new spectrum efficient systems.